ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 98-200
of Regulatory Fees for	)	
Fiscal Year 1999	)	

COMMENTS OF PANAMSAT CORPORATION

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SUMMARY

In the NOI, the Commission is seeking comments and suggestions for revising its schedule of regulatory fees, which affects geostationary orbit ("GSO") space station operators inequitably. Since the inception of the regulatory fee program only five years ago, the annual GSO space station fee has grown from $65,000 to $119,000 per satellite, per year. Moreover, non-common carrier satellite operators are now required to pay regulatory fees based upon the number of private international bearer circuits they provide. The actual resources, however, that the FCC devotes to the regulation of private GSO satellites, once they are launched, is minimal. As a result, the fee burden imposed on private GSO satellite operators is far out of proportion to the regulatory resources they consume.

By contrast, Comsat, which the FCC itself has recognized consumes substantial regulatory resources, see e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 16515, 16527 (1996), pays relatively little in the way of regulatory fees. Comsat entirely escapes space station fees and, although the Commission at one time required Comsat to pay a "Signatory Fee" to recover the costs of regulating Comsat, the order establishing the Signatory fee was vacated by the D.C. Circuit because the fee was not added "pursuant to any rulemaking or change in law." Comsat Corporation v. FCC ("Comsat"), 114 F.3d 223, 227-28 (D.C. Cir. 1997).

The time has come to put an end to the disparate treatment of private GSO space station operators. Accordingly, the Commission should:

- ensure that space station operators pay regulatory fees that bear some relation to the actual resources consumed by GSO space stations following launch;
- cease to impose international bearer circuit fees on non-common carrier satellite operators; and
- end the inequities built into the current fee program by collecting from Comsat the regulatory costs of regulating Comsat.

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PanAmSat Corporation ("PanAmSat"), by its attorneys, submits these comments regarding the above-referenced Notice of Inquiry (the "NOI"). In the comments below, PanAmSat shows that private GSO space station operators are treated unfairly in the Commission's schedule of regulatory fees. Accordingly, the Commission should:

- ensure that space station operators pay regulatory fees that bear some relation to the actual resources consumed by GSO space stations following launch;
- cease to impose international bearer circuit fees on non-common carrier satellite operators; and
- end the inequities built into the current fee program by collecting from Comsat the regulatory costs of regulating Comsat.

DISCUSSION

I. The GSO Space Station Fees Are Not Reasonably Related To The Benefits Conferred By Commission Regulation.

Section 9(b) of the Communications Act, as amended, 47 U.S.C. § 159(b)(1)(A), requires the Commission, in deriving its regulatory fees, to ensure that the fees assessed against regulated entities are reasonably related to the benefits conferred upon them by Commission regulation. The fees assessed against private GSO satellite operators, which now are nearly double what they were only four years ago, fail to satisfy this requirement. The new figure — $119,000 per satellite — is unreasonable on its face.

Once satellite services are authorized, the Commission incurs very little regulatory expense in overseeing satellite operations. Satellite services typically are provided on a non-common carrier basis (obviating Title II tariff and enforcement activities), the Commission rarely becomes involved in interference issues for licensed satellites, and the Commission only occasionally conducts satellite rulemaking proceedings that do not relate solely to new or proposed services. In fact, the vast majority of Commission resources expended on geostationary satellite services are devoted to the satellite licensing process. These costs, however, already are recovered through the satellite application fees. See 47 C.F.R. § 1.1107.

In short, as numerous parties have noted in the past, the regulatory fees assessed against GSO space station operators are grossly out of proportion to the degree of regulatory oversight exercised by the Commission for this service. Whatever the cause of this disconnect, it should be remedied as soon as possible.

There has been some suggestion that the lack of correlation between the costs of regulating on-station GSO satellites and the GSO space station fee is the result of GSO space station operators being charged for resources devoted to the establishment of new satellite services. To the extent that this is the case, that practice should be terminated.

The Commission's cost accounting system should reflect in the space station category only those costs incurred in regulating existing GSO services. Costs incurred in the establishment of new services in which there are not yet licensees should be spread *pro rata* among all payors. To impose them only on existing services that in some way resemble the proposed new service is to confuse technological similarities with market similarities. Further, a technological similarity between two services does not necessarily imply that there is any identity between the parties providing, or that will provide, the services.

II. The FCC Should Rescind Its Decision Expanding The Category Of Entities Responsible For Paying International Bearer Circuit Fees.

Section 9 of the Communications Act, which authorizes the Commission to collect regulatory fees to recover the cost of its enforcement, policy and rulemaking, user information, and international activities, was added by Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 397 (1993). That Act, among other things, provided that "carriers" are to pay regulatory fees based on the number of international bearer circuits they provide. This provision now is reflected in Section 9(g) of the Communications Act, which lists international bearer circuit fees as those to be assessed against "carriers."

The term "carrier," in turn, has a specific meaning in the Communications Act. Under Section 3(10), the term "carrier" has the same meaning as "common carrier," *i.e.*, "any person engaged as a common carrier for hire." 47 U.S.C. § 153(10). The Section 9 fee schedule, as adopted by Congress, therefore, is clear regarding the entities from whom Congress intended for the Commission to collect international bearer circuit fees — international common carriers. Notwithstanding this

Congressional intent, the Commission has extended the international bearer circuit fee to non-common carrier satellite operators in violation of Section 9.

Under Section 9(b)(3), the Commission may amend the fee schedule adopted by Congress only in limited circumstances. A change is permissible in order to ensure that fees are assessed against regulated entities in accordance with the benefits provided by Commission regulation. See Comsat, 114 F.3d at 227. Any such amendment, however, is limited in that the FCC may "add, delete, or reclassify services in the Schedule [only] to reflect additions, deletions, or changes in the nature of [the FCC's] services as a consequence of Commission rulemaking proceedings or a change in law." Id. (citing 47 U.S.C. § 159(b)(3)).

The FCC first assessed non-common carrier satellite operators for international bearer circuit fees in 1997. At that time, however, the FCC suggested that it was eliminating an "exempt[ion]" for non-common carrier satellite operators from the bearer circuit fees." Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161, 17188-189 (1997). It was not until the 1998 fee decision that FCC expressly amended the fee schedule such that non-common carrier satellite operators would be included in the category of entities required to pay international bearer circuit fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 12 Comm. Reg. 392, 403 (1998). The FCC alluded to three reasons for making this change. None passes muster under Section 9.

First, the FCC noted that it had eliminated a prior restriction on the number of interconnected circuits that common carriers may use on non-common carrier satellite systems. Second, the FCC cited an order in which the FCC determined that U.S.-licensed international satellite operators would be permitted to provide U.S. domestic service. Finally, the FCC suggested that private international circuits are equivalent to, and compete with, common carrier offerings of international bearer circuits. None of these rationales warrants extending to the operators of non-common carrier satellites a fee that Congress designed with common carriers in mind.

A. The Elimination Of The PSTN Restriction Did Not Change The Nature Of The FCC's Regulation Of Private Satellite Operators.

Until the launch of PanAmSat's "PAS-1" satellite in 1988, Comsat had a monopoly on all international satellite communications to and from the United

States. See Agreement Relating to the International Telecommunications Satellite Organization, 23 U.S.T. 3813, T.I.A.S. No. 7532 (Aug. 20, 1971). The launch of PAS-1 was preceded by a Presidential determination that competition in the international satellite market would serve the public interest. See Presidential Determination No. 85-2, 49 Fed. Reg. 46987 (Nov. 30, 1984). From the outset, PanAmSat and other "separate systems" were permitted to make capacity available to common carriers. The FCC, however, established a number of restrictions on the operation of separate systems, one of which was that such systems could not be used to provide services that are interconnected with the public switched telephone network ("PSTN").

Over the past ten years, the FCC has revisited and relaxed the PSTN restriction on several occasions. The restriction was first eased in 1990 when the FCC determined that it would permit private international satellite systems to provide: "up to 100 64 kilobit-per-second equivalent circuits [per satellite system] interconnected with the public switched networks for the provision of switched international telecommunications services; and... interconnected private line circuits." See Permissible Services of U.S.-Licensed International Communications Satellite Systems, 7 FCC Rcd 2313 (1992). In addition, at that time the FCC established January 1, 1997, as the date for complete elimination of the PSTN restriction.

In 1994, the number of private international satellite system circuits that could be devoted to interconnected services was increased from 100 per system to 1,250 per satellite. See Permissible Services of U.S.-Licensed International Communications Satellite Systems, 9 FCC Rcd 347 (1994). In 1996, the FCC again raised the number of allowable private international satellite system circuits interconnected to the PSTN, this time to 8,000 per satellite . See Permissible Services of U.S.-Licensed International Communications Satellite Systems, 11 FCC Rcd 16387 (1996).

The final sunset of the PSTN restriction in 1997, which now allows non-common carrier satellite operators to offer unlimited interconnected PSTN services, did not result in a change in the nature or scope of the FCC's regulation of private international satellite operators. Before the elimination of the PSTN restriction, non-common carrier satellite operators were permitted to provide circuits to common carriers, including circuits that would be used for services interconnected to the PSTN; now that the PSTN restriction has been eliminated, non-common

carrier satellite operators still are permitted to provide circuits to common carriers, including circuits that would be used for services interconnected to the PSTN.

At most, therefore, the elimination of the PSTN restriction increased the number of interconnected circuits that private satellite operators may offer to common carriers. That change, however, has not altered the FCC's regulation of the underlying satellite operators.

There is no logical connection, under the four categories of regulation that Section 9 addresses, between the regulatory load that the Commission faces and the fact that the Commission eliminated the restriction on the number of interconnected circuits that non-common carrier satellite operators may provide:

- There were no changes that the FCC needed to make to the policies and rules governing the operators of non-common carrier satellite operators in the wake of the sunset of the PSTN restriction.

- The FCC did not have to make any additional information available to the public concerning interconnected circuits or non-common carrier satellites.

- The FCC did not need to change one iota the manner in which it coordinates U.S.-licensed non-common carrier satellites internationally, because the number of interconnected circuits used by such satellites is irrelevant to the coordination process. Indeed, the Commission has never asked and does not know to what extent international satellite systems are used to provide interconnected service.

- The FCC did not need to step up its enforcement activities once the PSTN restriction reached its sunset. To the contrary. whereas prior to the sunset the FCC might have been called upon to determine whether separate systems had exceeded their quota of interconnected circuits, the elimination of the PSTN restriction left the Commission with no policy it had to enforce.

The Commission's change in interconnection policy, to the extent that it encouraged increased use of separate systems for common carrier purposes, arguably

increased the number of common carriers over which the Commission needs to exercise oversight. Whatever additional regulatory burden this state of affairs presents, however, is already taken into account in the fee schedule that originally appeared in Section 9. For each additional interconnected circuit that a common carrier provides via a non-common carrier satellite, it will pay an additional international bearer circuit fee. There is no justification for levying a new fee on the satellite operator on top of the fee paid by the common carrier. In any event, this issue is largely academic, because it remains the case that very few interconnected services are provided via separate systems. See Comsat Corporation, 13 FCC Rcd 14083 (1998) at ¶¶ 58-59.

B. The FCC's Decision To Allow Private International Satellite Operators To Provide U.S. Domestic Service Did Not Affect Its Regulation Of International Bearer Circuits.

The FCC's second purported rationale for its amendment to the fee schedule has even less merit than the first. The fact that non-common carrier international satellite operators now may provide pure U.S. domestic satellite service has nothing whatsoever to do with the nature or extent of the FCC's regulation of international bearer circuits. After all, these circuits are, by definition, "international." There is simply no nexus between the provision of U.S. domestic service by a satellite operator and the FCC's regulation of international bearer circuits.

C. Private Circuits Are Not Equivalent To Common Carrier Circuits For Regulatory Purposes.

Finally, whether or not private international bearer circuits are "technically identical" to common carrier international bearer circuits, they are not equivalent in terms of the regulatory resources they consume. Because non-common carrier circuits are offered on a private basis, they are not subject to the panoply of Title II regulation that applies to the circuits offered by common carriers. In any event, nothing about the "equivalency" of private and common carrier bearer circuits has changed as a result of any change in law or regulation; private international bearer circuits are just as "equivalent" to common carrier bearer circuits today as they were five years ago when Congress created the Section 9 fee schedule.

The FCC is left, then, with its contention that the amendment was necessary for competitive reasons. In fact, competitive concerns cut in the opposite direction. By charging non-common carrier satellite operators international bearer circuit fees,

the FCC is double charging for the regulation of many of the circuits provided by satellite operators. Private satellite operators are not common carriers; they offer circuits on a private basis to common carriers who themselves use the circuits to provide interconnected PSTN services to end users. Thus, under the amended fee schedule, the FCC now collects a bearer circuit fee from the satellite operator and a second fee for the same circuit from the satellite operator's common carrier customer. Such double charging is the epitome of arbitrary and capricious agency action.

III. The Costs Of Regulating Comsat Should Be Borne By Comsat.

A. Background

As set forth above, Congress added Section 9 in the Budget Reconciliation Act of 1993. In the first Notice of Proposed Rulemaking ("NPRM") implementing Section 9, there was no suggestion that Comsat would be exempt from paying space station fees. See Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 6957 (1994).

Indeed, in its comments on the 1994 NPRM, Comsat objected that the proposed space station fee for that year of $65,000 was "excessive" in that GSO satellites "no longer require the regulatory attention they received in their earlier developmental stage." Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 5333, 5364 (1994) (citing the comments filed by Comsat). The Commission rejected Comsat's argument because it would not "adjust the schedule of fees that Congress ha[d] enacted." Id. The FCC did not suggest at that time that the fee schedule adopted by Congress exempted Comsat from paying space station fees.

In the 1995 fee decision, however, the FCC concluded that Comsat should not be required to pay space station fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512, 13550 (1995). In support of this conclusion, the FCC did not rely in any fashion on the text of Section 9, which makes no mention of Comsat. Rather, the FCC referenced a single sentence in a Conference Report to the 1993 Budget Act, which itself incorporated "[t]o the extent applicable, the appropriate provisions" of an earlier House Committee Report from a previous Congress regarding a different piece of legislation. Id. at 13550 (citing H.R. Conf. Rep. No. 103-213, 103rd Cong., 1st Sess. (1993)).

The earlier House Report, in turn, provides only that the Committee intended for the fees in the space station category to be assessed "consistent with FCC jurisdiction.... [T]hese fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act." H.R. Rep. 102-207, 102d Cong., 1st Sess. 26 (1991).

Based entirely on this framework, made up of fragments of legislative history, the FCC concluded that the Congress that ultimately passed the 1993 Budget Act "did not intend for the Commission to assess a fee per space station for the space segment facilities of Intelsat and Inmarsat.... [and] we will not require Comsat ... to submit fee payments for their satellites." 10 FCC Rcd at 13550.

The following year the FCC added to its fee schedule a "Signatory fee." The Signatory fee was designed to recover from Comsat the "significant amount of costs directly attributable to [the FCC's] resource burden related to conducting [its] oversight of the U.S. Signatory" to Intelsat and Inmarsat. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd at 16527. The FCC concluded that 14.7% of the costs attributable to space station regulation was, in fact, attributable to its oversight and regulation of Comsat. Id. at 16528; see also Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 18774, 18790 (1996). Comsat appealed that decision and the D.C. Circuit vacated the order establishing the Signatory fee because the fee was not added pursuant to any change in the law or regulation of Comsat.

In its 1997 fee decision, the FCC declined to "assess a fee to recover the costs of [its] regulatory activities in connection with Comsat's role as U.S. Signatory." See 12 FCC Rcd at 17187. The FCC did not explain in that decision how the costs of regulating Comsat were being apportioned among other payors. As a result, PanAmSat once again suggested in its comments on the 1998 fee NPRM that the Commission assess Comsat for space station fees under Section 9.

Based on the number of payment units for space stations identified in the 1998 fee schedule, however, which did not change appreciably from 1997 to 1998 (41 space station payment units in 1997, 46 space station payment units in 1998), it is evident that the FCC once again has exempted Comsat from paying space station fees. Further, because the FCC allocates regulatory fees among its several Bureaus

according to the resources that each Bureau consumes, and because PanAmSat and Comsat both are regulated by the FCC's International Bureau, the FCC's decision to exempt Comsat from paying space station fees has shifted that significant burden to Comsat's direct competitors, including PanAmSat. The result is a two-fold windfall for Comsat; not only does it escape paying its fair share of regulatory fees, but its competitors are required to bear that burden for it. This scheme is inherently irrational and should be corrected.

B. Section 9 Does Not Exempt Comsat From Paying Space Station Fees.

The intent of the regulatory fee statute was for the FCC to recoup its regulatory expenses from the companies that it regulates. Section 9 by its terms requires that the FCC recover the costs of regulating entities within its jurisdiction through its regulatory fee program. See 47 U.S.C. § 159(a)(1). Absent a clear indication to the contrary, therefore, the presumption should be that Comsat is subject to regulatory fees.[1]

There is every reason to believe that Congress would have wanted Comsat to pay regulatory fees. Comsat is unquestionably within the Commission's jurisdiction; it is "fully subject to the provisions of Title II and Title III of [the Communications] Act." Id. § 741. Comsat files applications pursuant to Title II and Title III to provide services via Intelsat and Inmarsat satellites, and it pays the same application fee for "[s]pace [s]tations" under Section 8 of the Communications Act, 47 U.S.C. § 158, as a non-Signatory satellite applicant.

It also is beyond question that the FCC expends considerable resources that are attributable to Comsat. As noted above, almost 15% of the costs attributed to space station regulation in 1996 were directly related to the FCC's regulation of Comsat. See 11 FCC Rcd at 18774. In 1997, the FCC estimated that Signatory oversight activities alone represented approximately 7.8% of all international costs. See 12 FCC Rcd at 17187 n.26.

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[1] As the FCC itself has recognized in the past, regulatory fees under Section 9 should be assessed on a cost-causative basis. Thus, "the costs of [regulatory] activities related to the signatories should be recovered directly from the U.S. Signatories rather than from space station licensees generally." 11 FCC Rcd at 16527-28. Indeed, when fees cease to be applied against the cost-causative entities, they cease being "fees" and become "taxes." See, e.g., NCTA v. United States, 415 U.S. 336 (1974); cf. Engine Mfrs. Ass'n v. EPA, 20 F.3d 1177 (D.C. Cir. 1994).

The language of Section 9 is clear and unambiguous. Although Congress specifically exempted certain categories of entities from paying Section 9 fees, Comsat is not one of them. There is no exemption for Comsat in the text of Section 9 and nothing that would suggest that the FCC should not recover from Comsat the costs of regulating Comsat.

The legislative history on which the FCC has relied is inconclusive, and should not be used to override the clear expression of legislative intent in Section 9. The Conference Committee Report to the 1993 Budget Act incorporated into the legislative history of that Act, "[t]o the extent applicable, the appropriate provisions" of an earlier House Report from a previous Congress regarding a different piece of legislation. H.R. Conf. Rep. No. 103-213, 103rd Cong., 1st Sess. (1993). There are no guideposts provided by the Conference Report for determining what the "appropriate" provisions from the earlier House Report are or, to measure the extent to which they are "applicable" to the 1993 Budget Act legislation. The Conference Report could hardly be more vague or indeterminate.

Even, however, if one were to assume that all of the legislative history relating to space station fees from the earlier House Report should be incorporated into the legislative history of the 1993 Budget Act, a fee exemption for Comsat would be unwarranted because that earlier House Report was itself inconclusive as to the intent of Congress. The earlier House Report provides that the Committee intended for the fees in the space station category to be assessed "consistent with FCC jurisdiction" and that they should not be "applied to space stations operated by international organizations subject to the International Organizations Immunities Act." H.R. Rep. 102-207, 102d Cong., 1st Sess. 26 (1991). The most logical interpretation of this language is that Congress did not want to impose fees on Intelsat and Inmarsat, in recognition of their status as intergovernmental organizations. Any such concern, however, would not extend to Comsat, which is not "subject to the International Organizations Immunities Act," see 22 U.S.C. § 288, and is unquestionably within the FCC's jurisdiction.

The fact that the legislative history itself is ambiguous cannot be used to create an ambiguity in an otherwise unambiguous statute. See United States v. Gonzales, 117 S. Ct. 1032, 1034-36 (1997). "[Legislative history] can be used to clarify an otherwise ambiguous statutory term, but it cannot be used to muddy an unambiguous statutory term." Bower v. Federal Express Corp., 96 F.3d 200, 210 (6th

Cir. 1996) (citations omitted); see also United States v. Wildes, 120 F.3d 468, 471 (4th Cir. 1997) ("to consult the legislative history as a method of creating ambiguity instead of resolving it inverts the proper method of statutory interpretation"); United States v. Hayward, 6 F.3d 1241, 1248 (7th Cir. 1993) ("Consulting legislative history is intended to resolve ambiguities that arise from the language of a statute; it is not intended to create ambiguities.").

Indeed, to the extent that legislative sources outside of the text of Section 9 are consulted, the House Commerce Committee Report on the Communications Satellite Competition and Privatization Act of 1998, H.R. 1872, should be considered. That House Report explains that "the Committee believes that the Commission currently has the statutory authority to impose [space station] fees [on Comsat] but wishes to make explicit here that the Commission does indeed have such authority." H.R. Rep. 105-494, 105th Cong., 2d Sess. 63 (1998).

In short, the policies underlying the regulatory fee statute, the text of Section 9, and other legislative materials all suggest that Comsat is not exempt from paying space station fees under Section 9 for its use of, and access to, the Intelsat and Inmarsat systems.

C. Even If Section 9 Had Not Initially Required Comsat To Pay Space Station Fees, The Regulation Of Comsat Has Changed Sufficiently To Warrant Imposition Of A Fee On Comsat.

Assuming *arguendo* that Comsat was exempted from space stations fees when Section 9 was enacted, the regulation of Comsat nevertheless has changed sufficiently to warrant the imposition of space station fees, or some other fee designed specifically to recover the costs of regulating Comsat.

1. The Signatory Fee

In the Comsat case, the Court did not question the FCC's underlying judgment that its Signatory regulation consumes a substantial portion of the regulatory resources expended on international services. Nor did the Court hold or suggest that Comsat was in any way exempt from paying fees under Section 9. However, the court vacated the FCC's decision imposing a "Signatory fee" on Comsat because the Signatory fee was not added "pursuant to any rulemaking or change in law." Comsat, 114 F.3d at 227-28.

2. Post-"Section 9" Developments

Although there may not have been any changes in Comsat's Signatory status warranting the imposition of a Signatory fee, other changes adopted pursuant to a "rulemaking or change in law" afford an ample basis for recovering regulatory expenses from Comsat. Since the time that Section 9 was enacted, there has been a sea change in the regulation of Comsat. In multiple proceedings, the Commission is re-examining fundamental assumptions underlying the rules and policies that apply to Comsat. The thrust of these proceedings is to treat Comsat more like an ordinary commercial competitor and less like a natural monopoly. To the extent that Comsat is regulated more like an ordinary private company as a result of these changes, it is fair and appropriate that Comsat pay the regulatory fees that its private competitors must pay.

The Commission instituted its re-examination at Comsat's urging. In the "Comsat non-dominance" proceeding, Comsat took the position that the advent of separate systems, fiber optic undersea cables, and other developments have transformed international communications, eroding the market power that Comsat once enjoyed by virtue of its exclusive access in the United States to the Intelsat and Inmarsat systems. In response to these arguments, the Commission declared Comsat "non-dominant" on many routes and for many of its services. Comsat Corporation, 13 FCC Rcd 14083 (1998). Although the Commission's action is likely to ease its regulatory load as to submissions for which Comsat pays filing fees — principally tariffs and Section 214 applications — it is having the opposite effect on the activities that are funded by regulatory fees. Declaring Comsat non-dominant already has spawned two rulemakings, one addressing direct access to Intelsat and the other focusing on the issue of alternatives to traditional rate of return regulation for Comsat's "thin route" services. It is likely that the Commission will need to make additional adjustments.

The regulation of Comsat has changed in other ways since Section 9 came into force. In 1996 the Commission instituted the DISCO II proceeding exploring the circumstances in which it would permit non-U.S. licensed satellite systems to access the U.S. market. One element of the rulemaking concerned the provision of U.S. domestic services via Intelsat and Inmarsat satellites, culminating in a requirement that Comsat make a competition showing and a waiver of its immunity in connection with such services. See DISCO II, 12 FCC Rcd 24094 (1997). This issue is

before the Commission on reconsideration, and Comsat already is making it necessary for the Commission to explore the outer limits of the new policy by filing multiple requests for waiver of the new policy. See, e.g., Comsat Corporation, 13 FCC Rcd 15456 (1998) (denying Comsat authority to provide Inmarsat D+ service in the United States).

In light of these changes since Section 9 was adopted, the Commission should revise the Fee Schedule by requiring Comsat to pay space station fees, or some other fee designed to recover the costs of regulating Comsat. If Comsat wants to be regulated more in the manner of a private company, it should have no cause for complaint if it is required to pay the regulatory fees that its competitors must pay.

CONCLUSION

For the reasons stated herein, the Commission should calculate regulatory fees for space station operators in a more fair and equitable fashion by: (i) treating the cost of developing new satellite services as an overhead expense that would be spread across all regulatory fee ratepayers; (ii) rescinding its decision to apply the international common carrier bearer circuit fee to operators of non-common carrier satellites; and (iii) applying the regulatory fee requirement to Comsat in the manner discussed herein.

Respectfully submitted,

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